Supreme Court of the United States

OCTOBER TERM, 1960

No. 78

QUINCY BULLOCK, PETITIONER,

versus

STATE OF SOUTH CAROLINA, RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF FOR RESPONDENT

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OPINION BELOW

The Opinion of the Supreme Court of South Carolina is reported in 111 S. E. (2d) 657, and is contained in the printed record at page 261.

JURISDICTION

Petitioner's conviction and the judgment of the Court of General Sessions of Dillon County was unanimously affirmed by the Supreme Court of South Carolina on November 16, 1959. A petition for rehearing was denied on December 14, 1959. Petition for A Writ of Certiorari was served upon respondent on March 10, 1960. Petition for Writ of Certiorari and Motion for leave to proceed *in Forma Pauperis* was granted May 2, 1960. Petitioner invokes jurisdiction under 28 U. S. C., Section 1257 (3).

QUESTION PRESENTED

Whether the introduction into evidence of petitioner's confessions, State's Exhibits Numbers 9 and 10 (R. 254, 255, 256), violated petitioner's right to due process of law under the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

Fourteenth Amendment to the Constitution of the United States.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

The petitioner was convicted of murder in the Court of General Sessions for Dillon County, South Carolina, and sentenced to death. From this conviction and sentence, and from denial of a motion for a new trial, petitioner appealed to the Supreme Court of South Carolina. That Court considered on the merits all of the questions raised by the appeal, including petitioner's exception to the admission in evidence of State's Exhibits Nos. 9 and 10. These exhibits were confessions by petitioner admitting the crime for which he was tried. The Supreme Court of South Carolina unanimously affirmed the conviction and on December 14, 1959, denied a petition for rehearing.

Carolyn Barfield Wolshock was shot and killed on August 3, 1958. On Thursday, August 7, 1958, at about 5:30 o'clock in the afternoon, petitioner was arrested (R. 86).

On Friday, August 8, in the late afternoon petitioner made an oral confession (R. 87). On Monday, August 11, 1958, petitioner's confession was reduced to writing in two instruments and signed by petitioner at two separate times. These confessions are State's Exhibit 9 (R. 254-255) and State's Exhibit 10 (R. 256).

Testimony of the petitioner and his wife was that physical violence was inflicted on petitioner prior to his confessions, and petitioner asserts that the confessions resulted from this violence. Testimony of the several investigating officers positively denied any physical violence, or that any threat was made or inducement extended. The testimony of a physician who saw petitioner (R. 236) negates any evidence of violence.

Both State's Exhibits 9 and 10 were received into evidence (R. 104), following an extended examination by the Court of the Chief Investigating Officer, the Sheriff of Dillon County, with regard to whether they were voluntary (R. 88-89). This examination was out of the presence of the jury and was followed by an extended cross examination by Defense Counsel (R. 90-98).

After further direct examination of the Sheriff in the presence of the jury (R. 98-101), cross examination by the Defense (R. 101-103), and an explicit charge to the jury by the Court (R. 103-104), the confessions were received into evidence. The charge clearly instructed the jury to disregard the confessions if they found them not to have been freely and voluntarily made. Subsequent to their admission, Deputy Sheriff Harley Allen (R. 137-138) (R. 227-234), and Deputy Sheriff and Clerk W. B. Anderson (R. 138-151), testified that the confessions were freely and voluntarily made. The issue was made when petitioner testified that they were not voluntary (R. 192-209, 224-226). These charges raised sharply conflicting issues of fact and were decided adversely to petitioner by the jury.

At the conclusion of the trial the Court again instructed the jury pertaining to confessions (R. 242-243). The case went to the jury at 4:52 p. m. on October 25, 1958, and the verdict of guilty was returned at 8:55 p. m. .

Petitioner was ably represented at the trial by Court appointed attorneys, Messrs. Herbert Britt and W. B. Hawkins of Dillon, South Carolina.

ARGUMENT

The introduction into evidence of Petitioner's confessions, fairly obtained and voluntarily given, constituted no denial of due process as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

A fair study of the uncontradicted testimony concerning the confessions shows no coercion. The uncontradicted testimony is that Petitioner is a Negro (R. 75, 181), and that he is illiterate (R. 140, 197). All other assertions of Petitioner are sharply and unequivocally contradicted. It is recognized that reversal by this Court on the ground of coercion must be based on undisputed facts. *Gallegos v. Nebraska*, 342 U. S. 55, 63 S. Ct. 141.

Petitioner asserts that he was beaten and thereby forced to confess. A photograph of petitioner taken on the day of his confessions showed no evidence of injury (R. 229, 234). All allegations of brutality were flatly contradicted by Sheriff Rogers (R. 99) and by Deputy Sheriff Allen (R. 228). Dr. W. V. Branford testified that he saw the Petitioner on August 14, 1958, several hours after the confessions were signed, and that there was no evidence of injuries to petitioner (R. 236).

As to petitioner's assertions that he is a Negro and illiterate, this is admittedly true. Certainly these two facts are not enough standing alone to warrant a finding of coercion.

Petitioner's charge that he was held *incommunicado* from his arrest on Thursday, August 7th until Monday, August 11th, is not borne out by the record. He saw his wife at the jail on Friday, August 8th. Shortly thereafter, petitioner and his wife were carried to their home, where she was released. They had an opportunity to converse there and did so (R. 171, 172). Petitioner was in communication with his wife then and could have instructed her to see a lawyer. It is also uncontradicted that he conversed with his sister-in-law, Elva Bethea, on Friday, the day after he was arrested (R. 107). The claim that petitioner was held *incommunicado* without charge falls far short of substantiation. Petitioner's own testimony shows that he knew the charge against him (R. 193). Petitioner's treatment only remotely corresponds to the factual situations set forth in the cases of *Fikes v. Alabama*, 352 U. S. 191, 77 S. Ct. 281; *Harris v. South Carolina*, 338 U. S. 68, 69 S. Ct. 1357; *Turner v. Pennsylvania*, 338 U. S. 62, 69 S. Ct. 1352; and *Stein v. New York*, 346 U. S. 156, 73 S. Ct. 1077, cited in petitioner's brief.

Petitioner's allegation that he was continuously questioned is not sustained by the record. After petitioner's arrest late Thursday, August 8, he was questioned only briefly and not at all that night (R. 90). On Friday morning, August 9, the Sheriff talked to him about five minutes at the jail (R. 91). This was at eight o'clock. Around three o'clock in the afternoon on Friday he was removed to the old jail and questioned for some thirty to forty minutes (R. 93). When some two or three hundred people gathered at the old jail, petitioner was removed to the Judge's Chambers in the Court House and questioned for an hour and fifteen or twenty minutes (R. 94, 95). At this time there were five officers present (R. 94), a reasonable number in view of the gathering of a crowd of two or three hundred outside. About

dark, petitioner was carried to the Marion County Jail in Marion, South Carolina, a distance of some twenty miles from Dillon (R. 95). The officers stopped by Pate's Motel to pick up another officer before proceeding to Marion (R. 95). It is uncontradicted that petitioner was not taken into the motel (R. 95). Petitioner was questioned for twenty or twenty-five minutes in the automobile sitting in the Marion County Jail yard, and then made an oral confession admitting the murder (R. 96, 97). Thus it will be seen that after questioning for a total of some two and one-half hours on four occasions during a twelve-hour period, petitioner confessed. All this occurred on the very next day after his arrest. The Sheriff testified that he talked with petitioner on Saturday and Sunday at the Marion County jail (R. 97). The length of time is not given; however, this was after petitioner had already confessed. On Sunday night petitioner was returned to Dillon, and on the way back volunteered some information as to the location of certain roads in the graveyard where the crime occurred (R. 109). Petitioner signed his written confessions on Monday, August 11, there being no questioning at this time for the purpose of eliciting a confession. Thus, it appears that petitioner confessed the next day after his arrest after total questioning of two and one-half hours, all of it during daylight and early evening hours, and none late at night. Petitioner makes no claim that he was deprived of food or sleep. It can readily be seen that petitioner's interrogation is hardly comparable to that shown in *Chambers v. Florida*, 309 U. S. 227, 60 S. Ct. 472; *Ward v. Texas*, 316 U. S. 547, 62 S. Ct. 1139; *Ashcraft v. Tennessee*, 322 U. S. 143, 64 S. Ct. 921; or *Haley v. Ohio*, 332 U. S. 596, 68 S. Ct. 302.

Petitioner's charge that he was moved around from one jail to another, to the Court House, then to a motel, and finally to the Marion County Jail is closely interwoven with

the charge of continuous interrogation. There is no basis for the charge that he was carried to a motel; as set forth above, the uncontradicted testimony is that a momentary stop was made at a motel (R. 95). Although there is no indication that the gathering crowd made any overtures of violence or in any manner threatened petitioner, it was the Sheriff's duty to guard the petitioner from harm, and this he proceeded to do, in exemplary fashion. The presence of a crowd outside the jail could not have induced the petitioner to confess as he did not know the crowd was present (R. 193). Petitioner's removal to an adjoining County jail was in the interest of protecting him from possible violence.

Due process is not denied by failure to advise a prisoner against self-incrimination nor as to the right to counsel. *Wilson v. U. S.*, 162 U. S. 613.

Petitioner's contention that his arrest was not legal is without evidentiary support; however, if his arrest were illegal, he does not contend that it in any way induced him to confess. The only question before the Court is whether or not the petitioner was improperly induced to confess. There was no unreasonable detention here; Petitioner confessed the day after his arrest. There is no requirement in South Carolina that a person charged with felony be taken before a Magistrate; South Carolina procedure does not require arraignment before a magistrate. *Mallory v. U. S.*, 354 U. S. 455, 77 S. Ct. 1356, and *McNabb v. U. S.*, 318 U. S. 332, 63 S. Ct. 608, are inapplicable here, inasmuch as they turn upon a rule of evidence in Federal Courts. Rule 5 (a) of the Federal Rules of Criminal Procedure is likewise inapplicable, that being the crux of *Mallory v. U. S.*, and *McNabb v. U. S.*, *supra*.

Petitioner has received a fair trial by jury. The jury was fully instructed as to its duty with regard to the confessions (R. 242). Under South Carolina law, they were told

to disregard the confessions if they found them not to be voluntarily and freely given. There is no way to know whether they were found to be voluntary and considered, or involuntary and disregarded. There was, of course, ample evidence otherwise to convict. *Stein v. New York*, 346 U. S. 156, 73 S. Ct. 1077.

The Supreme Court of South Carolina unanimously affirmed petitioner's conviction in a well-reasoned opinion by Mr. Justice Moss. All points raised were thoroughly considered, and, following its doctrine of *in favorem vitae*, the record was carefully examined for any errors affecting the substantial rights of Petitioner, even though not made a ground of appeal. The Court found that petitioner's rights were fully protected, and reiterated its finding on petition for rehearing.

CONCLUSION

There is nothing in the record to warrant a finding of coercion as to petitioner's confessions. Instead, the conclusion is compelled that the confessions were free and voluntary, and that he was accorded every constitutional guarantee.

It is submitted that the judgment of the Supreme Court of South Carolina should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 78.—October Term, 1960.

Quincy Bullock, Petitioner, v. South Carolina.	On Writ of Certiorari to the Supreme Court of South Carolina.

[February 20, 1961.]

Per Curiam.

After hearing oral argument and fully examining the record which was only partially set forth in the petition for certiorari, we conclude that the totality of circumstances as the record makes them manifest did not warrant bringing the case here. Accordingly, the writ is dismissed.